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DEFINITION OF THE TERM "CHILD" UNDER RETIREMENT ACT

FEBRUARY 9, 1965.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

Mr. MURRAY, from the Committee on Post Office and Civil Service,
submitted the following

R E P O R T

[To accompany H.R. 1746]

The Committee on Post Office and Civil Service, to whom was referred the bill (H.R. 1746) to define the term "child" for lump-sum payment purposes under the Civil Service Retirement Act, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE

The purpose of this proposal is to relieve a problem the U.S. Civil Service Commission has encountered in administering the provisions of section 11 of the Civil Service Retirement Act by defining a "child" for the purposes of section 11 of the act as including an adopted child and a natural child, but not including a stepchild.

STATEMENT

This legislation is based on an official administration recommendation of the 88th Congress which was passed unanimously by the House of Representatives but not acted on by the Senate. The administration recommends enactment of H.R. 1746.

A lump sum is payable from the civil service retirement fund when there is no survivor annuity payable or when all survivor annuities terminate before the amount to the credit of the deceased employee or annuitant in the fund is exhausted. The lump sum is payable to the heirs of the decedent under the provisions of section 11 of the Civil Service Retirement Act.

In general, the Commission has followed the practice, in making such lump-sum payments, of including all natural children, including

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an illegitimate child. However, this practice is frequently challenged in some States where illegitimate children are not entitled to inherit even from a natural parent.

This legislation was recommended by the Commission so that there may be a uniform practice and a consistent rule for all Federal employees, and to avoid misunderstandings, appeals from decisions, and litigation in the limited number of affected cases.

The first section will remove an administration problem by defining a "child," for the purposes of section 11, as including an adopted child and a natural child, but not including a stepchild. The stepchild is excluded because a stepchild, under most State laws, is not an heir or next of kin, and does not inherit from a stepparent except under the specific terms of a will.

While it does not appear that this legislation would result in any additional benefits such as would require the appropriation of additional funds, as contemplated by the provisions under the heading "Civil Service Retirement and Disability Fund," in title I of the Independent Offices Appropriations Act, 1959, Public Law 85-844, section 2 of H.R. 1746 is included as a precaution in the event additional benefits do occur which cannot be foreseen by the committee. In such event, the additional benefits would be payable from the fund.

COST

No additional costs are involved in this proposal. It is expected that there will be an administrative saving in connection with the adjudication of claims and the elimination of litigation should this proposal be adopted.

REPORTS

The official request from the U.S. Civil Service Commission for the enactment of this legislation and agency reports are as follows:

U.S. CIVIL SERVICE COMMISSION,
Washington, D.C., January 24, 1963.

HON. JOHN W. McCORMACK,
Speaker of the House of Representatives.

DEAR MR. SPEAKER: In line with the apparent weight of judicial precedent, a child for Civil Service Retirement Act benefit purposes was for years generally considered as involving legitimate offspring. This general exclusion of illegitimate (natural) children was continued after the February 28, 1948, amendment introduced a plan for automatic widows' and children's survivor annuity for employees dying in service; for this purpose, the amendment defined children as follows:

"The term 'child' means an unmarried child, including a dependent stepchild or an adopted child, under the age of eighteen years, or such unmarried child who because of physical or mental disability is incapable of self-support."

In the unreported case of *Visor v. United States*, the U.S. District Court for the Eastern District of Missouri, Eastern Division, held the illegitimate children of a deceased civil servant entitled to survivor annuity under the 1948 amendment. The court's memorandum opinion, filed February 16, 1955, prior to actual judgment, recited in pertinent part:

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"Defendant contends that the term 'child' as used in the statute refers to legitimate children only and that if Congress had intended to include illegitimate children, it would have so stated. We feel, however, that if Congress had intended to exclude illegitimate children it would have so stated. In various other statutes in which illegitimate children were excluded, Congress has so provided by using the term 'legitimate children'."

The Commission accepted and applied this principle for survivor annuity and for lump-sum retirement payments. When reenacting the Civil Service Retirement Act in its entirety in 1956, Congress with Commission concurrence limited survivor annuity in this area to a "recognized natural child who received more than one-half his support from and lived with the member or employee in a regular parent-child relationship" (5 U.S.C. 2251(j)). This had the effect of restricting the *Visor* holding to illegitimates as described and denying survivor annuity to those beyond that scope.

The 1956 definition does not extend to lump-sum death payments under the Retirement Act, which payments are due only if no survivor annuity is payable or if all survivor annuities terminate before the amount to the deceased employee's credit in the retirement fund is exhausted. The Commission's position is still following the cited *Visor* principle as regards lump-sum payments is frequently and persuasively challenged in States where illegitimate children are not entitled to inherit or are otherwise not recognized on the same footing as legitimates. In other words, we are faced with a possible necessity of checking the appropriate State law and current judicial precedent each time a case of this nature arises.

This time-consuming administrative problem can be avoided by statutorily specifying the status of illegitimate children for purposes of lump-sum settlements as has already been done with respect to survivor annuities. The Commission believes that illegitimate children should be here recognized on a par with other children. Since adult children will generally be involved in lump-sum cases, the half-support and living-with requirements applicable to survivor annuity situations are inappropriate.

There is accordingly attached a draft bill to effect the desired result. It will involve no Government cost whatsoever, but will produce an administrative saving in connection with adjudicating claims and should eliminate litigation in the area. The Commission recommends its introduction and early enactment into law.

The Bureau of the Budget advises that from the standpoint of the administration's program there is no objection to the submission of this proposal.

By direction of the Commission.

Sincerely yours,

JOHN W. MACY, Jr., *Chairman.*

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U.S. CIVIL SERVICE COMMISSION,
Washington, D.C., February 1, 1965.

HON. TOM MURRAY,
Chairman, Committee on Post Office and Civil Service,
House of Representatives.

DEAR MR. CHAIRMAN: This refers further to your letter of January 12, 1965, requesting Commission report on H.R. 1746, a bill "To define the term 'child' for lump-sum payment purposes under the Civil Service Retirement Act."

H.R. 1746 embodies legislation officially recommended by the Commission in the 87th and 88th Congresses. Our submission to the 88th Congress resulted in the introduction of H.R. 3612 and S. 618. Public hearing was held March 26, 1963 on H.R. 3612 before your committee. Shortly thereafter the bill was reported (H. Rept. 193, dated Apr. 4, 1963) to the House of Representatives and was passed by that body on April 22, 1963. The legislation made no progress in the Senate, however, and failed of enactment.

H.R. 1746, which is identical to H.R. 3612 of the 88th Congress, proposes a clarifying amendment to the Retirement Act definition of "child" which is still needed. An explanation of the basis for this need follows.

Prior to 1955, the provisions of the Civil Service Retirement Act authorizing benefits to a child were interpreted by the Commission to include only a legitimate child as that term is used generally in the laws of domestic relations and statutes of descent and distribution. Survivor annuity benefits, and also lump-sum death benefits were denied a child if evidence showed him to be illegitimate. This construction of the law was in line with court decisions on similar statutory provisions affecting social security benefits and pay and allowances of officers in the uniformed services.

However, in 1955, in a case arising in Missouri (*Visor v. United States*, unreported, decided Feb. 28, 1955), the U.S. District Court for the Eastern District of Missouri held that since the Retirement Act did not specifically exclude illegitimate children, they should be viewed as included.

The Commission accepted and applied this principle for survivor annuity and for lump-sum retirement payments. When reenacting the Civil Service Retirement Act in its entirety in 1956, Congress with Commission concurrence limited survivor annuity in this area to a "recognized natural child who received more than one-half his support from and lived with the member or employee in a regular parent-child relationship" (6 U.S.C. 2251(j)). This had the effect of restricting the *Visor* holding to illegitimates as described and denying survivor annuity to those beyond that scope.

The 1956 definition does not extend to lump-sum death payments under the Retirement Act, which payments are due only if no survivor annuity is payable or if all survivor annuities terminate before the amount to the deceased employee's credit in the retirement fund is exhausted. Although the act does not presently define "child" for lump-sum benefit purposes, the Commission has since 1955 consistently followed the holding of the district court in the *Visor* case and does not withhold lump-sum benefits from illegitimate children.

Because the Retirement Act is silent as to its intention we are urged by claimants and their attorneys to disregard the court decision

and not view it as a precedent in States where illegitimates are not entitled to inherit or are recognized as having rights inferior to those of legitimate children. A desire to have a uniform practice and consistent rule for all Federal employees, and to avoid misunderstandings, appeals from decisions, and litigation in the limited number of affected cases prompted the Commission to seek legislation to statutorily define "child" for lump-sum benefit purposes as specifically including illegitimate children. Since adult children generally are involved in lump-sum cases, the half-support and living-with requirements applicable to survivor annuity situations are omitted from the lump-sum benefit definition as unnecessary.

H.R. 1746 proposes precisely the amendatory legislation previously recommended by the Commission and we urge that the bill be enacted into law. Enactment of the bill will involve no Government cost, but will produce an administrative saving by the elimination of disputes, appeals, and litigation in the adjudication of lump-sum death benefit claims.

The Bureau of the Budget advises that from the standpoint of the administration's program there is no objection to the submission of this report.

By direction of the Commission.

Sincerely yours,

JOHN W. MACY, Jr., *Chairman.*

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., January 29, 1965.

HON. TOM MURRAY,
Chairman, Committee on Post Office and Civil Service,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to the committee's request for the views of the Bureau of the Budget respecting H.R. 1746, a bill "To define the term 'child' for lump-sum payment purposes under the Civil Service Retirement Act."

The bill would specify in statute the status of illegitimate children for purposes of lump-sum settlement under the Civil Service Retirement Act. The status of such persons for purposes of survivor annuity is already specified in that act.

There would be no objection from the standpoint of the administration's program to the enactment of H.R. 1746.

Sincerely yours,

PHILLIP S. HUGHES,
Assistant Director for Legislative Reference.

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CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 1(j) OF THE CIVIL SERVICE RETIREMENT ACT
(5 U.S.C. 2251(j))

DEFINITIONS

Section 1. Wherever used in this Act—

* * * * *

(j) The term "child", for purposes of section 10, shall mean an unmarried child, including (1) an adopted child, and (2) a stepchild or recognized natural child who received more than one-half his support from and lived with the Member or employee in a regular parent-child relationship, under the age of eighteen years, or such unmarried child regardless of age who because of physical or mental disability incurred before age eighteen is incapable of self-support. *The term "child", for purposes of section 11, shall include an adopted child and a natural child, but shall not include a stepchild.*

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